

So Ordered.

Dated: September 20th, 2016




John A. Rossmeissl
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re ...

SPOKANE COUNTRY CLUB,

Debtor.

No. **13-01959-JAR11**
Chapter 11

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
CONFIRMATION OF LIQUIDATING
PLAN OF REORGANIZATION**

This matter came on for hearing upon the Liquidating Plan Of Reorganization that was filed by the Spokane Country Club ("SCC") on June 9, 2016. The Court considered the comments of counsel, and the records and files herein, including the following:

- Order Authorizing Rejection Of Executory Contracts regarding Valley Empire Collection [*Dkt. No. 229*];
- Order: (1) Authorizing Sale Of Assets To The Kalispel Tribe Of Indians Free And Clear Of Liens, Claims, Encumbrances, And Other Interests Pursuant To 11 U.S.C. § 363; (2) Authorizing Compromise Of Claims

1 And Approving Settlement Agreement; And (3) Shortening Time For
2 Notice [*Dkt. No. 1134*];

- 3 ▪ Order Authorizing Rejection Of Executory Contracts And Unexpired
4 Leases And Shortening Time [*Dkt. No. 1143*];
- 5 ▪ Order Granting Partial Relief From Order: (1) Authorizing Sale Of
6 Assets To The Kalispel Tribe Of Indians Free And Clear Of Liens,
7 Claims, Encumbrances, And Other Interests Pursuant To 11 U.S.C. §
8 363; (2) Authorizing Compromise Of Claims And Approving Settlement
9 Agreement; And (3) Shortening Time For Notice [*Dkt. No. 1186*];
- 10 ▪ Report On Sale Of Assets To The Kalispel Tribe Of Indians, And The
11 Compromise Of Claims With Drusilla Hieber, Laura Skaer, Nancy Van
12 Noy, And Tracy Christensen n/k/a Tracy Villanueva [*Dkt. No. 1206*];
- 13 ▪ Supplemental Report On Sale Of Assets To The Kalispel Tribe Of
14 Indians, And The Compromise Of Claims With Drusilla Hieber, Laura
15 Skaer, Nancy Van Noy, And Tracy Christensen n/k/a Tracy Villanueva
16 [*Dkt. No. 1239*];
- 17 ▪ Disclosure Statement Re: Liquidating Plan Of Reorganization [*Dkt. No.*
18 *1326*] (the “Disclosure Statement”);
- 19 ▪ Liquidating Plan Of Reorganization [*Dkt. No. 1327*] (the “Plan”);
- 20 ▪ Notice Of Filing Of Written Disclosure Statement And Proposed
21 Liquidating Plan Of Reorganization [*Dkt. No. 1331*];
- 22 ▪ Supplement To Disclosure Statement Re: Liquidating Plan Of
23 Reorganization [*Dkt. No. 1348*];
- 24 ▪ Notice Of Hearing Re: Approval Of Disclosure Statement Re:
25 Liquidating Plan Of Reorganization [*Dkt. No. 1350*];
- Declaration Of Service [Via First Class U.S. Mail] regarding Notice of
Hearing [*Dkt. No. 1351*];

- 1 ▪ Order Approving Disclosure Statement Re: Liquidating Plan Of
2 Reorganization And Setting Confirmation Hearing [*Dkt. No. 1356*] (the
3 “Order Approving Disclosure Statement”);
- 4 ▪ List Classifying Claims And Interests Pursuant To Disclosure Statement
5 Re: Liquidating Plan Of Reorganization And Liquidating Plan Of
6 Reorganization [*Dkt No. 1357*];
- 7 ▪ Notice Of Approval Of Disclosure Statement Re: Liquidating Plan Of
8 Reorganization, And Matters Relating To Confirmation [*Dkt. No. 1358*];
- 9 ▪ Declaration Of Service [Via First Class U.S. Mail] regarding balloting
10 materials [*Dkt. No. 1359*];
- 11 ▪ Report Of Balloting and Ballot Summary [*Dkt. Nos. 1515 and 1515-1*];
- 12 ▪ Declaration Of Mitch Blumenthal In Support Of Confirmation Of
13 Liquidating Plan Of Reorganization [*Dkt. No. 1522*] (the “Declaration of
14 Blumenthal”); and
- 15 ▪ Memorandum In Support Of Confirmation Of Liquidating Plan Of
16 Reorganization [*Dkt. No. 1523*];

16 Based on the foregoing, the Court enters the following FINDINGS OF FACT:

- 17 1. SCC filed a Disclosure Statement and Plan on June 9, 2016.
- 18 2. On August 4, 2016, following appropriate motion and notice, the Court
19 entered the Order Approving Disclosure Statement.
- 20 3. SCC transmitted the Order Approving Disclosure Statement, the Disclosure
21 Statement, the Supplement To Disclosure Statement Re: Liquidating Plan Of
22 Reorganization, the Plan, and related materials to the Master Mailing List on August 5,
23 2016.

1 4. Similar claims are classified appropriately in each class. The Plan provides
2 the same treatment for each claim or interest within a particular class.

3
4 5. SCC did not solicit acceptances or rejections of the Plan except as authorized
5 by the Order Approving Disclosure Statement.

6 6. The Plan provides for payment of the balance of any allowed priority claims,
7 allowed outstanding priority non-tax claims, and general unsecured claims to be paid in full
8 within two (2) weeks of the Effective Date¹ of the Plan. All remaining funds will be paid to
9 equity security interest holders within the reasonable discretion of the Reorganized SCC,
10 but not later than twenty-four (24) months after the Effective Date of the Plan.

11
12 7. The Plan has been proposed in good faith and not by any means forbidden by
13 law.

14
15 8. The compensation of Davidson Backman Medeiros PLLC and Anastasi,
16 Moore & Martin, PLLC for services rendered through the confirmation date will be subject
17 to Court approval after notice and hearing. Davidson Backman Medeiros PLLC and
18 Anastasi, Moore & Martin, PLLC will be employed after confirmation at their normal and
19

20
21
22 ¹ If the Order confirming the Plan is not appealed, and no motion for reconsideration or
23 similar relief is pending, the Effective Date will be the fifteenth day after the
24 Confirmation Date. If the Order is appealed, or a motion for reconsideration or similar
25 relief is pending, the Effective Date will be fifteen (15) days after the Order becomes a
Final Order.

1 usual hourly rates, plus reimbursement for expenses.

2 9. The Plan provides for no rate changes after confirmation of the Plan with any
3 governmental regulatory commission with jurisdiction over the rates of SCC.
4

5 10. Classes 2 and 3 are impaired. One hundred percent (100%) of the general
6 unsecured creditors (Class 2) that voted accepted the Plan. Of the equity security interest
7 holders (Class 3) that voted, ninety-nine point two percent (99.20%) by number accepted
8 the Plan.
9

10 11. As evidenced by the Declaration of Blumenthal and the Liquidation Analysis
11 attached to the Disclosure Statement, creditors will receive a greater distribution under the
12 Plan than creditors would receive if the assets of SCC were liquidated by a Chapter 7
13 Trustee or by any other means.
14

15 12. The Plan provides for the liquidation of the assets of the bankruptcy estate of
16 SCC and the distribution of funds to the holders of allowed claims in accordance with their
17 statutory priority. There will be no need for further financial reorganization.
18

19 13. The Plan provides for payment of administrative claims upon allowance by
20 the Court.
21

22 14. The Plan provides for payment of all U.S. Trustee fees when due, through the
23 closing of the case.
24
25

1 15. All SCC contributions to employee benefit plans have been paid. The SCC
2 401k Plan has been terminated. SCC has no remaining retiree benefits.

3
4 16. The Plan provides that, on and after the Effective Date, all entities who have
5 held, currently hold, or may hold a debt, claim, or interest against SCC, the bankruptcy
6 estate, SCC's existing or former trustees, officers, employees, or agents, the Reorganized
7 SCC, the Reorganized SCC's trustees, officers, employees, or agents, or their respective
8 property based on any act or omission, transaction, or other activity of any kind or nature
9 that occurred prior to the Effective Date, or otherwise arose or accrued prior to the Effective
10 Date, or that is otherwise discharged pursuant to the Plan, will be permanently enjoined
11 from taking any of the following actions: (a) commencing or continuing in any manner any
12 action or proceeding against SCC, SCC's existing or former trustees, officers, employees, or
13 agents, the Reorganized SCC, the Reorganized SCC's trustees, officers, employees, or
14 agents, or their respective property; (b) enforcing, attaching, collecting, or recovering in any
15 manner any judgment, award, decree, or order against SCC, SCC's existing or former
16 trustees, officers, employees, or agents, the Reorganized SCC, the Reorganized SCC's
17 trustees, officers, employees, or agents, or their respective property; (c) creating, perfecting,
18 or enforcing any legal encumbrance against SCC, SCC's existing or former trustees,
19 officers, employees, or agents, the Reorganized SCC, the Reorganized SCC's trustees,
20 officers, employees, or agents, or their respective property; and (d) commencing or
21
22
23
24
25

1 continuing any action, in any manner, in any place that does not comply with or is
2 inconsistent with the provisions of the Plan, the Confirmation Order, or the discharge
3 provisions of Code § 1141. The Plan further provides that any entity injured by any willful
4 violation of such permanent injunction will recover actual damages, including, without
5 limitation, costs and attorney's fees, and, in appropriate circumstances, recover punitive
6 damages.
7

8
9 17. The Plan provides that, pursuant to RCW 24.06.035, captioned Nonprofit
10 status – Member's officers' immunity from liability, as set forth at RCW 24.06.035(1), each
11 existing and former trustee and officer of SCC will have the same immunity from liability as
12 is granted in RCW 4.24.264, which states:
13

14 (1) Except as provided in subsection (2) of this section, a member of
15 the board of directors or an officer of any nonprofit corporation is not
16 individually liable for any discretionary decision or failure to make a
17 discretionary decision within his or her official capacity as director or officer
unless the decision or failure to decide constitutes gross negligence.

18 (2) Nothing in this section shall limit or modify in any manner the
19 duties or liabilities of a director or officer of a corporation to the corporation
20 or the corporation's members.

21 18. The Plan provides that, as authorized by RCW 24.06.035(2), no existing and
22 former trustee and officer of SCC will be individually liable to SCC or its shareholders or
23 members in their capacity as shareholders or members for conduct within his or her official
24 capacity as a director or officer after July 22, 2001, except for acts or omissions that involve
25

1 intentional misconduct or a knowing violation of the law, or that involve a transaction from
2 which the director or officer will personally receive a benefit in money, property, or services
3 to which the director or officer is not legally entitled.
4

5 19. The Plan provides that SCC, the Reorganized SCC, and their respective
6 present or former officers, directors, employees, members, agents, representatives,
7 shareholders, attorneys, accountants, financial advisors, vendors, consultants, experts, or
8 professionals of the foregoing reserve all rights, before or after the Effective Date, to seek
9 exculpation and release from any claims (including, without limitation, any claims whether
10 known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law,
11 equity, or otherwise) for any past or future actions taken or omitted under or in connection
12 with, related to, effecting, or arising out of this bankruptcy case including, without
13 limitation, the formulation, negotiation, documentation, preparation, dissemination,
14 implementation, administration, confirmation, or consummation of the Plan and Disclosure
15 Statement; except only for actions or omissions to the extent determined by a court of
16 competent jurisdiction (in a Final Order) to be by reason of such party's gross negligence,
17 willful misconduct, or fraud, and in all respects such party will be entitled to rely upon the
18 advice of counsel with respect to his or her duties and responsibilities under the Plan,
19 including the right to assert that any act or omission taken with the approval of the
20 Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful
21
22
23
24
25

1 misconduct, or fraud unless the approval of the Bankruptcy Court was obtained by fraud or
2 misrepresentation.

3
4 20. The Plan provides that, on the Effective Date, all matters provided for under
5 the Plan that would otherwise require approval of the trustees, officers, or members of SCC
6 or the Reorganized SCC, including, without limitation, the implementation and performance
7 of the Plan, including the filing of Articles of Dissolution, may occur without any further
8 action by the trustees, officers, or members of SCC.
9

10 21. No objections to confirmation of the Plan were filed.

11
12 Based on the foregoing FINDINGS OF FACT, the Court enters the following
13 CONCLUSIONS OF LAW:

14 1. The Plan has been accepted in writing by the creditors and equity security
15 holders whose acceptance is required by law.

16
17 2. The provisions of Chapter 11 have been complied with; the Plan has been
18 proposed in good faith and not by means forbidden by law.

19
20 3. Each holder of a claim or interest has accepted the Plan or will receive or
21 retain under the Plan, property of a value, as of the Effective Date of the Plan, that is not less
22 than the amount that such holder would receive or retain if SCC was liquidated under
23 Chapter 7 of the Code on such date, the Plan does not discriminate unfairly, and is fair and
24 equitable with respect to each class of claims or interests that are impaired under the Plan.
25

1 4. All payments made or promised by SCC by a person issuing securities or
2 acquiring property under the Plan or by any other person for services or for costs and
3 expenses in, or in connection with, the Plan and incident to the case, have been fully
4 disclosed to the Court and are reasonable or, if to be fixed after confirmation of the Plan,
5 will be subject to approval of the Court.
6

7 5. The identity, qualifications, and affiliations of the persons who are to be
8 directors or officers, if any, of SCC and the Reorganized SCC after confirmation of the Plan
9 have been fully disclosed, and the appointment of such persons to such offices or the
10 continued appointment of such persons to such offices, or their continuance therein, is
11 equitable and consistent with the interests of the creditors and equity security holders and
12 with public policy.
13

14 6. The identity of any insider that will be employed or retained by SCC and the
15 Reorganized SCC and their compensation has been fully disclosed.
16

17 7. Confirmation of the Plan is not likely to be followed by the need for further
18 financial reorganization of SCC.
19

20 8. The Plan shall be substantially consummated pursuant to 11 U.S.C. § 1101(2)
21 upon commencement of distributions under the Plan, upon full payment of all
22 administrative expenses, and upon the conclusion of all contested matters.
23
24
25

1 9. On and after the Effective Date, all entities who have held, currently hold, or
2 may hold a debt, claim, or interest against SCC, the bankruptcy estate, SCC's existing or
3 former trustees, officers, employees, or agents, the Reorganized SCC, the Reorganized
4 SCC's trustees, officers, employees, or agents, or their respective property based on any act
5 or omission, transaction, or other activity of any kind or nature that occurred prior to the
6 Effective Date, or otherwise arose or accrued prior to the Effective Date, or that is otherwise
7 discharged pursuant to the Plan, should be permanently enjoined from taking any of the
8 following actions: (a) commencing or continuing in any manner any action or proceeding
9 against SCC, SCC's existing or former trustees, officers, employees, or agents, the
10 Reorganized SCC, the Reorganized SCC's trustees, officers, employees, or agents, or their
11 respective property; (b) enforcing, attaching, collecting, or recovering in any manner any
12 judgment, award, decree, or order against SCC, SCC's existing or former trustees, officers,
13 employees, or agents, the Reorganized SCC, the Reorganized SCC's trustees, officers,
14 employees, or agents, or their respective property; (c) creating, perfecting, or enforcing any
15 legal encumbrance against SCC, SCC's existing or former trustees, officers, employees, or
16 agents, the Reorganized SCC, the Reorganized SCC's trustees, officers, employees, or
17 agents, or their respective property; and (d) commencing or continuing any action, in any
18 manner, in any place that does not comply with or is inconsistent with the provisions of the
19 Plan, the Confirmation Order, or the discharge provisions of Code § 1141. Any entity
20
21
22
23
24
25

1 injured by any willful violation of such permanent injunction should recover actual
2 damages, including, without limitation, costs and attorney's fees, and, in appropriate
3 circumstances, recover punitive damages.
4

5 10. Pursuant to RCW 24.06.035, captioned Nonprofit status – Member's officers'
6 immunity from liability, as set forth at RCW 24.06.035(1), each existing and/or former
7 trustee and officer of SCC should have the same immunity from liability as is granted in
8 RCW 4.24.264, which states:
9

10 (1) Except as provided in subsection (2) of this section, a member of
11 the board of directors or an officer of any nonprofit corporation is not
12 individually liable for any discretionary decision or failure to make a
13 discretionary decision within his or her official capacity as director or officer
14 unless the decision or failure to decide constitutes gross negligence.

15 (2) Nothing in this section shall limit or modify in any manner the
16 duties or liabilities of a director or officer of a corporation to the corporation
17 or the corporation's members.

18 11. As authorized by RCW 24.06.035(2), no existing and/or former trustee and
19 officer of SCC should be individually liable to SCC or its shareholders or members in their
20 capacity as shareholders or members for conduct within his or her official capacity as a
21 director or officer after July 22, 2001, except for acts or omissions that involve intentional
22 misconduct or a knowing violation of the law, or that involve a transaction from which the
23 director or officer will personally receive a benefit in money, property, or services to which
24 the director or officer is not legally entitled.
25

1 12. SCC, the Reorganized SCC, and their respective present or former officers,
2 directors, employees, members, agents, representatives, shareholders, attorneys,
3 accountants, financial advisors, vendors, consultants, experts, or professionals of the
4 foregoing should reserve all rights, before or after the Effective Date, to seek exculpation
5 and release from any claims (including, without limitation, any claims whether known or
6 unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or
7 otherwise) for any past or future actions taken or omitted under or in connection with,
8 related to, effecting, or arising out of this bankruptcy case including, without limitation, the
9 formulation, negotiation, documentation, preparation, dissemination, implementation,
10 administration, confirmation, or consummation of the Plan and Disclosure Statement; except
11 only for actions or omissions to the extent determined by a court of competent jurisdiction
12 (in a Final Order) to be by reason of such party's gross negligence, willful misconduct, or
13 fraud, and in all respects such party should be entitled to rely upon the advice of counsel
14 with respect to his or her duties and responsibilities under the Plan, including the right to
15 assert that any act or omission taken with the approval of the Bankruptcy Court will be
16 conclusively deemed not to constitute gross negligence, willful misconduct, or fraud unless
17 the approval of the Bankruptcy Court was obtained by fraud or misrepresentation.
18
19
20
21
22

23 13. On the Effective Date, all matters provided for under the Plan that would
24 otherwise require approval of the trustees, officers, or members of SCC or the Reorganized
25

1 SCC, including, without limitation, the implementation and performance of the Plan,
2 including the filing of Articles of Dissolution, should occur without any further action by
3 the trustees, officers, or members of SCC.
4

5 /// End of Order ///

6 Presented by:

7 DAVIDSON BACKMAN MEDEIROS PLLC
8

9 /s/ Barry W. Davidson

10 Barry W. Davidson, WSBA No. 07908
11 Attorney for the Spokane Country Club
12 1550 Bank of America Financial Center
13 601 West Riverside Avenue
14 Spokane, Washington 99201
15 Telephone: (509) 624-4600
16
17
18
19
20
21
22
23
24
25